

SPECIAL PROVISIONS

to the BASE CONTRACT FOR SHORT TERM

SALE AND PURCHASE OF NATURAL GAS

(GISB Standard 6.3.1, version 1.4, Dated January 7, 2000)

between

CALIFORNIA DEPARTMENT OF WATER RESOURCES

P. O. Box 219001
3310 El Camino Avenue
Sacramento, CA 95821
("CDWR")

and

DYNEGY MARKETING AND TRADE

("Dynergy")

Dated: July 1, 2001

Contract # _____

The parties agree to amend the General Terms and Conditions of the Base Contract as follows:

1. The following shall be added immediately following Section 1.1:
 - 1.1.1 The parties agree that this Base Contract shall only be used for transactions having a Delivery Period of one year or less and may not be used for transactions having a delivery period in excess of one year.
2. The second sentence of Section 1.2 **Oral Transaction Procedure** shall be amended to read as follows:

Any Gas purchase and sale transaction may be effectuated in a recorded telephone conversation with the offer and acceptance constituting the agreement of the parties.

3. The third sentence of Section 1.2 **Oral Transaction Procedure** shall be deleted and replaced with the following:

The parties acknowledge that their Transaction will not be binding until the exchange of non-conflicting written Transaction Confirmations.

4. The penultimate sentence of Section 1.2 **Oral Transaction Procedure** shall be amended as follows:

“EDI” shall be deleted.

5. Section 1.3 of “Purpose and procedures” shall be modified by deleting the last sentence thereof in its entirety and replacing it with the following sentence in lieu thereof:

In the event of a conflict among the terms of “(i) a Transaction Confirmation that is fully executed or passage of the Confirm Deadline without objection from the receiving party, (ii) a recorded conversation, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

6. Section 2.6, “Contract” is modified by inserting the phrase “as modified by the Special Provisions” between the words “Base Contract” and “and (ii)”.

7. Section 2.9 and Section 3.2 shall be amended as follows:

The phrase “or alternate fuels” shall be deleted.

8. Section 2.14 shall be deleted.

9. The following shall be added immediately following Section 2.26:

"Buyer" shall mean the purchaser of Gas in a Transaction formed pursuant to this Base Contract.

"Seller" shall mean the seller of Gas in a Transaction formed pursuant to this Base Contract.

“Fund” shall mean Department of Water Resources Electric Power Fund established by Section 80200 of the Water Code of the State of California (the “Water Code”).

“Transaction” shall mean a purchase and sale transaction formed pursuant to Section 1. for a particular delivery period.

10. Section 5, “Quality and Measurement” shall be modified by deleting the first sentence in its entirety and replacing it with the following sentence in lieu thereof:

All Gas delivered by Seller shall meet the pressure, quality and heat requirements of the Receiving Transporter.

11. Section 7, “Billing, Payment, and Audit” is modified by adding the following new Section 7.5 at the end thereof:

7.5 Notwithstanding the other provisions of this Section 7, if Gas is purchased or sold pursuant to this Base Contract or any Transaction Confirmation, the party owing the greater amount, including any related liquidated damages, interest, and payments or credits for its purchases during such calendar month (the “Debtor”) shall apply the amount owed (the “Credit Balance”) by the Debtor on or before the same due date to the other party (the “Creditor”) and, after deduction of the Credit Balance, shall pay to the Creditor the net amount in immediately available funds.

12. Section 8.2 of “Title, Warranty and Indemnity” is modified by adding the following sentence at the end thereof:

ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

13. The second sentence of Section 8.3 shall be amended to read as follows:

To the extent expressly permitted by law, Buyer agrees to indemnify Seller and save it harmless from all claims, from any and all other persons, arising from or out of claims regarding payment, personal injury or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

14. Section 10.1(iv) of “Financial Responsibility” shall be modified by deleting the word “or” after the semicolon at the end thereof.

15. Section 10.1(v) of “Financial Responsibility” shall be modified by adding the word “or” after the semicolon at the end thereof.

16. Section 10.1 of “Financial Responsibility” shall be modified by adding the following as Subsection (vi) after the word "or" at the end of Subsection (v) thereof:

(vi) fail to give adequate security for or assurance of its ability to perform its further obligations within two (2) Business Days of a reasonable written request by the non-defaulting party.

17. The following shall be added immediately following Section 10.2:

10.3. CDWR's obligation to make payment of amounts due hereunder from the Fund in accordance with the provisions of Sections 10.4, 10.5 and 10.6 shall be deemed adequate assurance and sufficient security in form and term acceptable to Seller for the purposes of Section 10.1.

18. The following shall be added immediately following Section 10.3:

10.4. CDWR's obligation to make payments hereunder shall be limited solely to the Fund. Any liability of CDWR arising in connection with this Base Contract or any claim based thereon or with respect thereto, including, but not limited to, any payment pursuant Section 3.2 hereof arising as the result of any breach or event of default under this Base Contract, and any other payment obligation or liability of or judgment against Buyer hereunder, shall be satisfied solely from the Fund. **NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS BASE CONTRACT.** Revenues and assets of the State Water Resources Development System shall not be liable for or available to make any payments or satisfy any obligation arising under this Base Contract.

19. The following shall be added immediately following Section 10.4:

10.5. Payments made by CDWR under this Base Contract shall constitute an operating expense of the Fund payable prior to (a) payments related to all bonds, notes or other indebtedness secured by a pledge or assignment of all revenues under any obligation entered into, and rights to receive the same, and moneys on deposit in the Fund and income or revenue derived from the investment thereof or (b) payments to the general fund.

20. The following shall be added immediately following Section 10.5:

10.6. In accordance with Section 80134 of the Water Code, CDWR covenants that it will, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by CDWR pursuant to this Base Contract. As provided in Section 80200 of the Water Code, while any obligations of CDWR pursuant to this Base Contract remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of CDWR and the California Public Utilities Commission shall not be diminished or impaired in

any manner that will affect adversely the interests and rights of the Seller under this Base Contract.

21. Section 10.7 is added to the Base Contract at the end of Section 10, "Financial Responsibility" as follows:

10.7 In the event that the non-defaulting party terminates this Base Contract or a Transaction pursuant to Section 10.1, the non-defaulting party shall have the right to designate an early termination date ("Early Termination Date") as any date on or after the event of default under Section 10.1. Upon the Early Termination Date, the non-defaulting party shall have the right to liquidate all, and not less than all, Transactions(s) under this Base Contract then outstanding by: (i) closing out each Transaction(s) at its Market Value, as defined below, so that each such amount equal to the difference between such Market Value and Contract Value, as defined below, of such Transaction(s) shall be due to the Buyer under the Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (ii) discounting each amount then due under clause (i) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Transactions); and (iii) setting off or aggregating, as appropriate, any or all settlement payments (discounted as appropriate) and (at the election of the non-defaulting party) any or all other amounts owing between the parties under this Base Contract so that all such amounts are aggregated and/or netted to a single liquidated amount payable by one party to the other. The non-defaulting party shall give notice that a liquidation pursuant to this Section 10.6 has occurred to the defaulting party no later than one Business Day following such liquidation, provided that, failure to give such notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the defaulting party against the non-defaulting party. The net amount due to any such liquidation shall be paid by the close of the business on the fifth (5th) Business Day following notice of the Early Termination Date.

For purposes of this Section 10.7, "Contract Value" means the amount of Gas remaining to be delivered or purchased on a firm basis under a Transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased on a firm basis under a Transaction multiplied by the market price determined by the non-defaulting party in a commercially reasonable manner considering, among other valuations, quotations from leading dealers in gas contracts, any or all of the settlement prices of the NYMEX gas futures contracts, any or all of the settlement prices on other established gas exchanges and other bona fide third party offers. Any

extension of the term of a Transaction to which the Parties are not bound as of the Early Termination Date (including but not limited to evergreen provisions and options to extend) shall not be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the non-defaulting party in a commercially reasonable manner. The parties agree that a Transaction under this Section 10.7 shall constitute a forward contract within the meaning of the United States Bankruptcy Code, and the parties agree that Dynegy under this Base Contract is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

22. Section 11.3 of Force Majeure shall be modified by deleting the word “or” before Subsection 11.3(iii) and adding the following at the end of the first sentence thereof: “or (iv) increases or decreases in gas supply due to allocation or reallocation of production by well operators, pipelines, or third parties other than regulatory agencies; (v) the loss of Buyer’s markets or Buyer’s inability economically to use or resell Gas purchased hereunder; (vi) Seller’s ability to sell Gas to a more advantageous market or Buyer’s ability to purchase gas at a price more advantageous than the Contract Price, or (vii) a regulatory agency disallowing the pass through of costs resulting from this Base Contract.

23. The following shall be added immediately following Section 13.8:

13.9. Dynegy has stated that, because of the administrative burden and delays associated with such requirements, Dynegy would not enter into this Base Contract if the provisions of the Government Code of California and the Public Contracts Code of California applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Base Contract. Accordingly, pursuant to Section 80014(b) of the Water Code, CDWR has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Base Contract and that such provisions and requirements are therefore not applicable to or incorporated in this Base Contract.

24. The following shall be added immediately following Section 13.9:

13.10. It is understood by the parties that, with respect to the CDWR, only the following persons or such other persons as designated in writing by CDWR shall be authorized to enter into any transaction contemplated hereunder on behalf of CDWR: (1) Mark Baldwin; (2) Chuck Toney.

25. The following shall be added immediately following Section 13.10:

13.11. It is understood by the parties that the California Department of Water Resources means the California Department of Water Resources, acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80270 of the Water Code of California, **as amended**, and not under its powers and responsibilities with respect to the State Water Resources Development System.

26. The following shall be added immediately following Section 13.11:

13.12. Each party hereby expressly consents that the other party may record, by tape or otherwise, any verbal agreements or discussions, whether telephonic or otherwise, between the parties. Each party waives any further notice of such monitoring or recording, and agrees to notify its officers, employees and agents of such monitoring or recording and to obtain any necessary consent of such officers, employees and agents. A recording of a verbal agreement may be relied upon to resolve any differences regarding the terms of a Transaction provided that a true and complete copy of such recording is made available to the party who does not possess such recording. No party may knowingly destroy or erase a recording once the possessing party becomes aware of an actual dispute in which the recording may reasonably be anticipated to be discoverable.